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DEPARTMENT FOR WHA/CEN JASON MACK

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SUBJECT: HUMAN RIGHTS OMBUDSWOMAN SLAMS CAFTA-DR

SUMMARY

¶1. Costa Rica's Human Rights Ombudswoman, Dr. Lisbeth Quesada, released a report on March 30 criticizing the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR). Comparing the relative bargaining power of the U.S. and Costa Rica to "a wild tiger vs. a captive rabbit," the report identifies the Ombudswoman's concerns with the agreement, but refrains from specifically recommending rejection of the treaty. While Costa Rica's negotiating team races to refute Dr. Quesada's criticism, local CAFTA-DR opponents had a field day, crowing that the report confirmed their arguments against ratification. End summary.

A BULLY PULPIT WITHOUT EQUAL

¶2. Elected by the Legislative Assembly for up to two consecutive four-year terms, the Human Rights Ombudsman is given the broad mandate of protecting the rights of all residents in Costa Rica, regardless of nationality. The Ombudsman's office has over time become a bully pulpit and has built a reputation for being outspoken and opinionated on controversial topics, such as a former Ombudsman's successful suit to declare unconstitutional President Abel Pacheco's support for the U.S.-led coalition in Iraq.

¶3. Current Ombudswoman Lisbeth Quesada, a pediatrician and former professional actress, began her tenure in August 2005. Relatively quiet for the first few months of her tenure, Dr. Quesada has recently unleashed a wave of opinions on government institutions, corruption and foreign policy. Her most recent target is CAFTA-DR. Likening the relative bargaining power of the U.S. and Costa Rica to a "wild tiger vs. a captive rabbit," Dr. Quesada launched a highly publicized criticism of the treaty at a press conference on March 30. The press conference coincided with the release of her office's analysis of CAFTA-DR, which details more completely her concerns with the agreement.

OPPOSITION DELAYED, BUT NOT UNEXPECTED

¶4. While she has publicly withheld her stance on CAFTA-DR until now, Dr. Quesada has made no secret of her opposition to the agreement in meetings with Embassy officials and Ambassador Langdale. She has expressed on numerous occasions that CAFTA-DR by itself will not be a panacea for Costa Rica's or Central America's economic woes, and expressed doubt that those countries where CAFTA-DR had already entered into force would close the development gap between them and

Costa Rica. Dr. Quesada has demurred on the question of whether she intends to challenge the constitutionality of CAFTA-DR.

¶5. While the report does not call explicitly for the rejection of CAFTA-DR, it asserts that the treaty will be detrimental to the country unless it is accompanied by sweeping social reforms in the form of a long-delayed complementary agenda. Further, Dr. Quesada stated her belief that the Legislative Assembly must include "interpretive clauses" in its ratification of the treaty, giving the GOCR more flexibility in breaking up government service monopolies.

COMPREHENSIVE CRITICISM

¶6. Identified in the report as the Ombudswoman's primary areas of concern were:

--Telecommunications: CAFTA-DR will require Costa Rica to strip the Costa Rica Electricity Institute (ICE) of its monopoly status for cellular, Internet and data services. Dr. Quesada asserts that, without these businesses to subsidize ICE's continued monopoly for less profitable land-line services, prices for terrestrial phone service are certain to increase, and favors requiring new Internet and cellular service providers to help subsidize terrestrial services.

--Sovereignty: The Ombudswoman's report asserts that CAFTA-DR imposes restrictions on the Legislative Assembly's ability to legislate, and that Costa Rica will be obliged to adopt implementation criteria developed by "other states," and prevents the GOCR from resolving trade disputes in its own courts.

--Labor Standards: While acknowledging that CAFTA-DR provides some opportunities for improving enforcement of existing labor laws within member countries, Dr. Quesada asserts that countries with higher labor standards will be placed at a competitive disadvantage. (Note: She is comparing labor standards in Costa Rica with what she perceives to be the lower standards of other Central American countries. End note.)

--Environment: Despite CAFTA-DR's built-in requirements for environmental protection, Quesada maintains that Costa Rica will be unable to enforce its stricter-than-average protections against multinational corporations.

--Distribution of wealth: Quesada acknowledges that CAFTA-DR will bring increased investment and national income. She argues, however, that very little of that income will benefit lower-income citizens. Of particular concern are small farmers and rural residents.

--Agricultural inequity: Dr. Quesada asserts that Costa Rica's farmers will be unable to compete with subsidized U.S. agriculture, and that the country has no anticipated plan for dealing with the potentially negative effect of the treaty on small farmers. (Note: The Minister of Agriculture challenged Quesada on this point, noting that 80 percent of farmers support CAFTA-DR. End note.)

¶7. Reactions to the report from both sides in the CAFTA-DR debate were swift and predictable. Labor unions, the country's most vocal opponents to the free trade deal, applauded Dr. Quesada's report and pledged to support the Ombudswoman. CAFTA-DR's supporters, on the other hand, disagreed with Quesada. The day after the report was released, a pro-CAFTA-DR attorney in private practice asked the Prosecutor General to bring criminal charges against Quesada for illegally attempting to "create disorder in the streets and chaos in the country." Marco Vinicio Ruiz, the incoming Minister of Foreign Trade, defended CAFTA-DR, reiterating that its benefits far outweigh any potential problems. He stated that when he heard Dr. Quesada's

statements, he thought that her efforts were misdirected and that she should instead focus on protecting the "500,000 jobs that depend on exports."

COMMENT

18. All of Dr. Quesada's arguments against CAFTA-DR have long since been debated and addressed. They are given added weight, however, by her position as protector of the poor and marginalized. She will undoubtedly raise these issues again, likely challenging the constitutionality of CAFTA-DR if it is voted favorably by the Legislative Assembly.
LANGDALE